IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928

RFA.No. 598 of 2006()

OS.80/2006 of SUB COURT, PATHANAMTHITTA
.....

: APPELLANT/PLAINTIFF;

RAGHAVA KURUP, S/O.NARAYANA KURUP
MUKALUMPURATHU VADAKKETHIL HOUSE,
KURAMPALA MURI, KURAMPALA VILLAGE,
ADOOR TALUK.

BY ADV. SRI.D.KISHORE

RESPONDENTS: DEFENDANT:

NARAYANAN S/O.VELUTHAKUNJU
NIRAVATHAYATHU HOUSE, KURAMPALA MURI,
MURAMPALA VILLAGE, ADOOR.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.4776/06 IN R.F.A.NO.598/2006

DISMISSED.

3.1.2007.

SD/- KURIAN JOSEPH, JUDGE.
SD/- A.K.BASHEER, JUDGE.

KURIAN JOSEPH & A.K.BASHEER, JJ.

R.F.A. No.598 of 2006

Dated 3rd January, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is directed against the judgment and decree in O.S.80/06 on the file of the Subordinate Judge's Court, Pathanamthitta. Despite service of notice, there is no appearance for the respondent/defendant. The suit is one for specific performance. The court fee payable in the suit is Rs.38,900/-, according to the appellant. The defendant was set ex parte on 21.7.2006 and the case was posted for payment of balance court fee and evidence. It is submitted that in the meanwhile, the counsel for the appellant had discontinued practice and left for Mumbai, and hence there was omission to take note of the posting, and thus on 24.11.2006, the plaint was rejected for non-payment of balance court fee.

2. After having heard learned counsel appearing for the appellant and on going through the materials on record, we are satisfied that it is only in the interests of justice that the appellant is given one more opportunity to pay the balance court fee and prosecute the case on merits. Therefore, we set aside

the judgment dated 24.11.2006 in O.S.80/06, and the decree thereof. There will be a direction to the Subordinate Judge's Court, Pathanamthitta to permit the appellant/plaintiff to pay the balance court fee within three weeks from today. It is made clear that in case the balance court fee as above is not paid within the said period, the judgment and decree shall stand confirmed. The interim order dated 19.12.2006 will continue till the disposal of the suit.

The Regular First Appeal is disposed of as above.

I.A.4776/06 : Closed.

KURIAN JOSEPH, JUDGE.

A.K.BASHEER, JUDGE.

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KURIAN JOSEPH & A.K.BASHEER, JJ

W.P.(C) NO. OF 2004

J U D G M E N T

Dated 3rd January, 2007.